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**CITY OF LINCOLN, NEBRASKA**

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**ORDINANCE NO. \_\_\_\_\_**

**(Passed January \_\_, 2004**

**Approved January \_\_, 2004)**

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**Authorizing Not to Exceed**

**\$35,000,000**

**GENERAL OBLIGATION HIGHWAY ALLOCATION FUND BONDS**

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CITY OF LINCOLN, NEBRASKA

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION HIGHWAY ALLOCATION FUND BONDS OF THE CITY OF LINCOLN, NEBRASKA (THE “CITY”), IN ONE OR MORE SERIES IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$35,000,000 (THE “BONDS”), FOR THE PURPOSE OF PROVIDING FUNDS TO PAY THE COSTS OF CONSTRUCTING IMPROVEMENTS TO CERTAIN STREETS OF THE CITY AND TO PAY THE COSTS OF ISSUING THE BONDS; PRESCRIBING CERTAIN OF THE TERMS OF THE BONDS; DELEGATING, AUTHORIZING AND DIRECTING THE FINANCE DIRECTOR TO EXERCISE HIS OR HER OWN INDEPENDENT JUDGMENT AND ABSOLUTE DISCRETION IN (A) DETERMINING, FIXING AND FINALIZING THE PRINCIPAL AMOUNT, RATES OF INTEREST AND THE OTHER TERMS AND PROVISIONS WITH RESPECT TO SUCH BONDS NOT SPECIFIED HEREIN, (B) DETERMINING THE MANNER IN WHICH SUCH BONDS SHALL BE SOLD, BE IT PUBLIC OR PRIVATE SALE, (C) ACCEPTING A BID OR NEGOTIATING AN AGREEMENT (THE “SALE AGREEMENT”) FOR THE PURCHASE OF SUCH BONDS, AND (D) DETERMINING AND FIXING THE TERMS AND PROVISIONS OF ANY SUCH SALE AGREEMENT; PLEDGING FUNDS RECEIVED FROM THE NEBRASKA HIGHWAY ALLOCATION FUND AND PROVIDING FOR THE LEVY OF A TAX ON ALL OF THE TAXABLE PROPERTY WITHIN THE CITY TO PAY THE PRINCIPAL OF AND INTEREST ON SUCH BONDS; AUTHORIZING AND APPROVING CERTAIN OTHER RELATED MATTERS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LINCOLN, NEBRASKA:

**Section 1. Findings and Determinations.** The City Council (the “Council”) of the City of Lincoln, Nebraska (the “City”) hereby finds and determines:

(a) It is necessary, desirable and advisable that the City construct improvements to certain highways and roads of the City as shall be determined by the Mayor and Council from time to time (collectively, the “Project”):

(b) The estimated costs for such improvements are not less than \$35,000,000.

(c) Pursuant to the provisions of Section 66-4,101, Reissue Revised Statutes of Nebraska, as amended (the “Act”), the City is authorized (i) to issue its general obligation highway allocation fund bonds to pay the costs of the Project, (ii) to pledge funds received from the State of Nebraska Highway Allocation Fund (the “Highway Allocation Fund”) to the payment of the principal thereof and the interest thereon, and (iii) to levy and collect a tax, unlimited in amount, upon all the taxable property with the City, except intangible property, which, together with receipts from the Highway Allocation Fund pledged to the payment of such bonds, will be sufficient in amount to pay the principal of such bonds and the interest thereon when and as the same become due.

(d) Taking into consideration available funds of the City for such purposes, it will be necessary for the City to issue its general obligation highway allocation fund bonds in one or

more series in the aggregate principal amount of not to exceed \$35,000,000 to pay the costs of the Project.

(e) The City's expected receipts from the Nebraska Highway Allocation Fund for its current fiscal year are not less than \$15,00,000, and the City has no bonds or other evidences of bonded indebtedness outstanding issued pursuant to or payable under the Act.

(f) All conditions, acts and things required to exist or to be done precedent to the issuance of the Bonds, the pledging of funds and the levying of taxes as provided in this Ordinance do exist and have been done as required by law.

**Section 2. Authorization of Bonds.** For the purpose of providing funds to (1) pay the costs of constructing the Project and to pay expenses relating to the issuance of such bonds, there shall be, and there are hereby ordered to be issued, pursuant to the Act, Bonds of the City in one or more series as may be determined by the Finance Director in accordance with the terms and provisions of this Ordinance in an aggregate principal amount of not to exceed \$35,000,000, which Bonds shall be designated "City of Lincoln, Nebraska General Obligation Highway Allocation Fund Bonds" (the "**Bonds**").

**Section 3. Definitions.** In addition to those words and terms elsewhere defined herein:

"**Beneficial Owner**" shall have the meaning specified in **Subsection 11(a)** hereof.

"**Bonds**" shall mean the City's General Obligation Highway Allocation Fund Bonds, authorized to be issued in one or more series pursuant to this Ordinance and in an aggregate principal amount not to exceed \$35,000,000.

"**Book-Entry Bond(s)**" means the Bonds registered in the name of a nominee of the Depository as the registered owner thereof pursuant to the terms and provisions hereof.

"**City Clerk**" shall mean the City Clerk or the Deputy City Clerk or the Acting City Clerk or the Acting Deputy City Clerk of the City.

"**City Controller**" means the City Controller or Acting City Controller of the City or any successor officer acting in the same or similar capacity.

"**City Council**" or "**Council**" shall mean the governing body of the City.

"**City Treasurer**" shall mean the Treasurer or the Deputy Treasurer or the Acting Treasurer or the Acting Deputy Treasurer of the City.

"**Code**" shall mean the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder.

"**Continuing Disclosure Certificate**" shall mean the Continuing Disclosure Certificate executed by the City dated the date of issuance and delivery of the Bonds, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

"**Debt Service Fund**" shall mean the Debt Service Fund described in **Subsection 25(b)** hereof.

"**Deposit Securities**" shall mean direct or unconditionally guaranteed obligations of the United States of America, including any such obligations issued in book-entry form.

**“Depository”** shall have the meaning specified in **Section 10** hereof.

**“Escrow Obligations”** shall mean (1) Deposit Securities, (2) certificates of deposit issued by a bank or trust company which are (a) fully insured by the Federal Deposit Insurance Corporation or similar corporation chartered by the United States or (b) secured by a pledge of any Deposit Securities having an aggregate market value, exclusive of accrued interest, equal at least to the principal amount of the certificates so secured, which security is held in a custody account by a custodian satisfactory to the Registrar or the City Treasurer, as the case may be, or (3)(a) evidences of a direct ownership in future interest or principal on Deposit Securities, which Deposit Securities are held in a custody account by a custodian satisfactory to the Registrar or the City Treasurer, as the case may be, pursuant to the terms of a custody agreement in form and substance acceptable to the Registrar or the City Treasurer, as the case may be, and (b) obligations issued by any state of the United States or any political subdivision, public instrumentality or public authority of any state, which obligations are fully secured by and payable solely from Deposit Securities, which Deposit Securities are held pursuant to an agreement in form and substance acceptable to the Registrar or the City Treasurer, as the case may be, and, in any such case, maturing as to principal and interest in such amounts and at such times as will insure the availability of sufficient money to make the payment secured thereby.

**“Finance Director”** means the Finance Director or the Acting Finance Director of the City.

**“Holder of Bonds”** or **“Owner of Bonds,”** whenever used with respect to a Bond, means the person whose name is recorded as the beneficial owner of such Bond or a portion of such Bond by a Participant on the records of such Participant or such person’s subrogee.

**“Interest Payment Date”** shall mean, with respect to the Bonds, such dates as shall be determined by the Finance Director in accordance with the provisions of **Section 6** of this Ordinance.

**“Ordinance”** shall mean this ordinance as from time to time amended or supplemented.

**“Outstanding”** when used with reference to Bonds shall mean, as of any date, all Bonds theretofore issued and not yet paid or discharged under the terms of this Ordinance.

**“Participant”** shall have the meaning specified in **Subsection 11(a)** hereof.

**“Participating Underwriter”** shall have the meaning ascribed thereto in any applicable Continuing Disclosure Certificate.

**“Project”** shall mean such improvements to the City’s streets, highways and roads as shall be approved by the Mayor and City Council from time to time.

**“Record Date”** means, with respect to the Bonds, such day as shall be determined by the Finance Director in accordance with the provisions of **Section 6** hereof.

**“Registrar”** shall mean the person, corporation, partnership or other entity selected and appointed by the Finance Director to act as paying agent and registrar for the Bonds pursuant to **Section 6** hereof, and any successor thereto.

**“Representation Letter”** shall have the meaning specified in **Section 10** hereof.

**“Reserve Fund”** shall mean any debt service reserve fund or account appropriately designated established by the Finance Director with respect to a series of Bonds issued hereunder in accordance with the provisions of **Section 25(c)** hereof.

**“Serial Bonds”** shall mean Bonds of any series which mature in consecutive years and all of the principal of which is due at the stated maturity thereof.

**“Street Construction Fund”** shall mean the Street Construction Fund created and established by Section 3.20.220 of the Lincoln Municipal Code.

**“Tax Certificate”** shall mean the Federal Tax Certificate executed and delivered by the City in connection with the issuance of a series of Bonds, as the same may be amended or supplemented in accordance with the provisions thereof.

**“Term Bonds”** shall mean Bonds stated to be payable by their terms by operation of a sinking fund account on one or more specified dates.

#### **Section 4. Pledge of Receipts from Highway Allocation Fund; Application of Bond Proceeds.**

(a) Pledge of Receipts from Highway Allocation Fund. For the prompt payment of the Bonds, both principal and interest, when and as the same shall become due, the City hereby pledges all receipts now or hereafter received by the City from the Highway Allocation Fund, as described and referred to in the Act. The pledge provided for in this **Section 4(a)** shall not prevent the City from applying receipts from said Fund in any year so long as sufficient receipts from such fund have been set aside for the payment of the principal of and interest on the Bonds falling due in such year. In addition, the City further reserves the right to issue additional highway allocation fund pledge bonds payable on a parity with and equally and ratably secured by a pledge of receipts from the Highway Allocation Fund. To the extent that other legally available money of the City appropriated for such purposes is insufficient to pay the principal of and interest on any series of Bonds when and as the same shall become due, the City hereby further agrees that it will cause to be levied and collected annually a tax on all the taxable property in the City within any applicable statutory and constitutional limitations sufficient in amount to pay the principal of and interest on the Bonds until the same is fully paid. The provisions of this Ordinance shall constitute a contract between the City and the registered owners of the Bonds, and any registered owners of any Bond may either in law or equity, by suit, action, mandamus or other proceedings enforce or compel performance of this Ordinance.

(b) Application of Bond Proceeds. The net proceeds of the sale of the Bonds shall be received by the Finance Director and deposited, credited, used and applied as follows:

(i) Accrued interest, if any, received upon the issuance, sale and delivery of the Bonds shall be deposited into the Debt Service Fund described in **Subsection 25(b)** hereof.

(ii) The balance of the proceeds of the Bonds shall be deposited into the 2004 Highway Allocation Construction Fund established in **Section 25(a)** hereof.

**Section 5. Payment of Bonds.** (a) Payments of the interest due on the Bonds prior to maturity or earlier redemption shall be made by the Registrar by mailing a check or draft in the amount due for such interest on each Interest Payment Date to the registered owner of each Bond, as of the Record Date for such Interest Payment Date, to such owner’s registered address as shown on the books of registration as required to be maintained in **Section 24** hereof. Payment of the principal and interest due at maturity or at any date fixed for redemption prior to maturity together with any unpaid interest accrued thereon

shall be made by the Registrar to the registered owners upon presentation and surrender of the Bonds to the Registrar. The City and the Registrar may treat the registered owner of any Bond as the absolute owner of such Bond for the purpose of making payments thereon and for all other purposes and neither the City nor the Registrar shall be affected by any notice or knowledge to the contrary whether such Bond or any installment of interest due thereon shall be overdue or not. All payments on account of interest or principal made to the registered owner of any Bond in accordance with the terms of this Ordinance shall be valid and effectual and shall be a discharge of the City and the Registrar in respect of the liability upon the Bonds or claims for interest to the extent of the sum or sums so paid.

(b) In the event that payments of the interest due on the Bonds on any Interest Payment Date are not paid when due, such interest shall cease to be payable to the registered owners as of the Record Date for such Interest Payment Date and shall be payable to the registered owners of the Bonds as of a special date of record for payment of such defaulted interest as shall be designated by the Registrar whenever money for the purpose of paying such defaulted interest becomes available.

#### **Section 6. Authority of Finance Director With Respect to Bonds.**

The Finance Director is hereby authorized to hereafter, from time to time, specify, set, designate, determine, establish and appoint, as the case may be, and in each case in accordance with and subject to the provisions of this Ordinance, (1) the date of original issue of each series of Bonds, the designation thereof and the manner of numbering with respect thereto, (2) the principal amount of each series Bonds to be issued, which shall in no event exceed an aggregate of \$35,000,000 in original principal amount, (3) the principal maturity dates of each series of Bonds and the principal amount of such series of Bonds to mature on each such maturity date; provided, however, that no Bond shall have a final maturity more than twenty (20) years after its date of issuance, (4) the Bonds of each series to be issued as (a) Series Bonds and (b) Term Bonds, (5) the Interest Payment Dates and the related Record Dates for each series of Bonds, (6) the form and content of any notice of sale or similar document utilized by the City if such series of Bonds are sold at public sale, the form and content, terms and provisions of any bond purchase or similar agreement with respect to such series of Bonds between the City and an underwriter, underwriters or other purchaser, including without limitation the price at which such series of Bonds shall be sold to such underwriter, underwriters or other purchaser pursuant thereto (which with an underwriting discount of not more than 2.00% of the aggregate principal amount thereof) and the price or prices at which the underwriter, underwriters or other purchaser may offer and sell the same to the public, if such series of Bonds are sold at private sale, the temporary termination of any engagement of a financial advisor by the City and any other matter relating to sale of the Bonds; (7) the rate or rates of interest to be carried by each maturity of each series of Bonds such that the yield on each series of Bonds (computed in conformance with the provisions of the Code shall not exceed ten percent (10.00%)), (8) whether or not the Bonds of any series shall be subject to redemption prior to their stated maturity, and if subject to such prior redemption the provisions governing such prior redemption, the redemption price (not to exceed 104% of the principal amount then being redeemed plus accrued interest to the date of redemption) payable upon such redemption and the respective periods in which differing redemption prices shall be payable, (9) the amount and due date of each sinking fund installment for any of the Bonds which are issued as Term Bonds, (10) whether the Bonds of any series shall be secured by a Reserve Fund and, if so, the balance to be maintained therein, (11) the identity of the Registrar for each series of Bonds and the compensation to be paid to the Registrar for so acting, (12) the form and contents of any agreement for services between the City and each Registrar, and (13) all of the other terms and provisions of the Bonds not otherwise specified or fixed by the provisions of this Ordinance. The Finance Director, in the exercise of his or her own independent judgment and absolute discretion, is hereby authorized to impose such additional covenants, restrictions, terms and conditions with respect to each series of Bonds as shall be required by any Rating Agency to maintain the ratings in effect with respect to such series of Bonds on the date of adoption of this Ordinance.



**Section 7. Delivery of Bonds.** Upon execution and authentication of a series of Bonds, they shall be delivered to the City Treasurer, acting on behalf of the City, who is authorized to deliver them to the initial purchaser(s) thereof designated by the Finance Director, upon receipt of the purchase price therefor as agreed upon by the Finance Director and such initial purchaser(s). Said initial purchaser(s) shall have the right to direct the registration of such series of Bonds as to ownership. The City Clerk is hereby authorized and directed to make and certify a transcript of the proceedings of the City with respect to each series of Bonds, a copy of which transcript shall be delivered to such initial purchaser(s).

**Section 8. Form of Bonds Generally.** The definitive Bonds are issuable in registered form without coupons in denominations of \$5,000 or any integral multiple thereof. The Bonds issued under the provisions of this Ordinance shall be substantially in the form set forth in this **Section 8**, with such appropriate variations, omissions and insertions as are permitted or required by this Ordinance and with such designation and additional changes as the Finance Director may deem necessary or appropriate. All such Bonds may have endorsed thereon such legends or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or of any securities exchange on which the Bonds may be listed or any usage or requirement of law with respect thereto.

Each series of Bonds shall be in substantially the following form:

*[The remainder of this page intentionally left blank.]*



The **CITY OF LINCOLN, NEBRASKA** (the “City”) acknowledges itself indebted to, and for value received hereby promises to pay to the Registered Owner hereof named above, or registered assigns, on the Date of Maturity stated above (or earlier as hereinafter referred to), the Principal Amount stated above upon presentation and surrender hereof at the office of the bond registrar and paying agent, \_\_\_\_\_, in Lincoln, Nebraska (the “Registrar”), and in like manner to pay interest on said Principal Amount at the Rate of Interest stated above from the Date of Original Issue stated above, or the most recent interest payment date to which interest has been paid or duly provided for, as specified below, to maturity or earlier redemption, payable semiannually on \_\_\_\_\_ and \_\_\_\_\_ of each year until payment in full of such Principal Amount, beginning \_\_\_\_\_, 2004 (each an “**Interest Payment Date**”), by check or draft mailed to the Registered Owner hereof as shown on the bond registration books maintained by the Registrar on the \_\_\_\_\_ day of the month preceding the month in which an Interest Payment Date occurs, at such owner’s address as it appears on such bond registration books. The principal of this bond and the interest hereon are payable in any coin or currency which on the respective dates of payment thereof is legal tender for the payment of debts due the United States of America.

This bond is one of an authorized series of bonds of like designation herewith aggregating \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) in principal amount issued by the City all of like date and tenor except as to denomination, Date of Maturity and Interest Rate which have been issued by the City for the purpose of paying the costs of constructing certain improvements to certain streets, highways and roads of the City under the authority of and in full compliance with the Constitution and statutes of the State of Nebraska, including particularly Section 66-4,101, Reissue Revised Statutes of Nebraska, as amended and paying the costs of such bonds and pursuant to Ordinance No. \_\_\_\_\_ duly passed by the Council of the City on \_\_\_\_\_, 2004 and approved by the Mayor of the City on \_\_\_\_\_, 2004 and all other ordinances amendatory thereof or supplemental thereto (Ordinance No. \_\_\_\_\_ and all other ordinances amendatory thereof or supplemental thereto being herein referred to collectively as the “**Ordinance**”) and by proceedings duly had by the Mayor and City Council of the City.

In the Ordinance, the City has pledged funds received and to be received from the Highway Allocation Fund of the State of Nebraska and allocates such receipts to payment of the principal hereof and the interest hereon when and as the same becomes due. In addition, the City has covenanted and agreed that to the extent other legally available money of the City appropriated for such purposes is insufficient to pay the principal of and interest on any series of Bonds when and as the same shall become due, it shall levy ad valorem taxes upon all the taxable property in the City at such rate or rates, within applicable Charter, statutory and constitutional limitations, which, together with receipts from the Highway Allocation Fund and any other money made available and used for such purpose, will be sufficient to make payment of the principal of and interest on this bond and all other bonds of the issue of which this bond is one, as the same shall become due.

Reference is hereby made to the Ordinance, a copy of which is on file in the office of the City Clerk, and to all the provisions of which any owner of this bond by its acceptance hereof hereby assents, for a description of and the nature and extent of the security for the bonds issued under the Ordinance, including this bond; the Highway Allocation Fund and tax revenues pledged to the payment of the principal of and interest on this bond; the terms and provisions upon which the covenants made therein may be discharged at or prior to the maturity or redemption of this bond, and this bond thereafter no longer be secured by the Ordinance or be deemed to be outstanding thereunder, if money or certain specified securities shall have been deposited with the Registrar or the City Treasurer sufficient and held in trust solely for the payment hereof; and for the other terms and provisions thereof.

The bonds of the series of bonds of which this bond is one are subject to redemption prior to maturity, at the option of the City, on or after \_\_\_\_\_, \_\_\_\_\_, in whole at any time or

in part from time to time in such principal amounts and from such maturity or maturities as the City may, in its sole and absolute discretion, determine and by lot within a maturity, at a redemption price equal to the percentage of the principal amount of the bond to be redeemed set forth below together with the interest accrued on such principal amount to the date fixed for redemption:

Period During Which Redeemed  
(Inclusive)

Redemption Price  
(% of Principal Amount)

In the event this bond is called for prior redemption, notice of such redemption shall be given by first class mail to the Registered Owner hereof at its address as shown on the registration books maintained by the Registrar not less than thirty (30) days prior to the date fixed for redemption. If this bond shall have been duly called for redemption and notice of such redemption duly given as aforesaid, then upon such redemption date this bond shall become due and payable and if money for the payment of this bond at the then applicable redemption price or together with the then applicable redemption premium, if any, and the interest accrued on the principal amount hereof to the date of redemption shall be held for the purpose of such payment by the Registrar, interest shall cease to accrue and become payable hereon from and after the redemption date.

This bond is transferable by the Registered Owner hereof in person or by its attorney duly authorized in writing at the principal office of the Registrar, but only in the manner, subject to the limitations and upon payment of the charges provided in the Ordinance and upon surrender and cancellation of this bond. Upon such transfer, a new bond or bonds of the same series and of the same maturity, of authorized denomination or denominations and for the same aggregate principal amount, will be issued to the transferee in exchange therefor. The City and the Registrar may deem and treat the Registered Owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and premium, if any, hereon and interest due hereon and for all other purposes.

The bonds of this series are issuable only as fully registered bonds without coupons in denominations of \$5,000 or any integral multiple thereof not exceeding the principal amount maturing in any one year. As provided in the Ordinance and subject to certain limitations therein set forth, the bonds of this series are exchangeable for a like aggregate principal amount of bonds of this series of a different authorized denomination, as requested by the Registered Owner or its duly authorized attorney upon surrender thereof to the Registrar.

It is hereby certified, recited and declared that all acts, conditions and things required to have happened, to exist and to have been performed precedent to and in the issuance of this bond and the series and issue of which it is one have happened, do exist and have been performed in regular and due time, form and manner; that this bond and the issue and series of which it is one do not exceed any constitutional, statutory or charter limitation on indebtedness; and that provision has been made for the payment of the principal of and interest on this bond and the series and issue of which it is one as provided in the Ordinance.

(FORM OF ASSIGNMENT)

**ASSIGNMENT**

**FOR VALUE RECEIVED**, the undersigned hereby sells, assigns and transfers unto

\_\_\_\_\_  
Print or Type Name, Address and Social Security Number  
or other Taxpayer Identification Number of Transferee

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ agent to transfer the within Bond on the Bond Register kept by the Paying Agent for the registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
NOTICE: The signature to this assignment must correspond with the name of the Registered Owner as it appears upon the face of the within Bond in every particular.

Signature Guaranteed By:

\_\_\_\_\_  
Name of Eligible Guarantor Institution as defined by SEC Rule 17 Ad-15 (17 CFR 240.17 Ad-15)

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**Section 9. Details of Bonds.**

(a) Each Bond shall bear interest from the Interest Payment Date next preceding the date on which it is authenticated, unless authenticated on an Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or, unless authenticated prior to the first Interest Payment Date, in which event it shall bear interest from its date of original issue; provided, however, that if at the time of authentication of any Bond, interest is in default, such Bond shall bear interest from the date to which interest has been paid.

(b) Both the principal of and the interest on each Bond shall be payable in any coin or currency of the United States of America which on the respective dates of payment thereof is legal tender for the payment of public and private debts. The principal of all Bonds upon maturity or the redemption price payable upon redemption prior to maturity and the interest due thereon shall be payable at the principal office of the Registrar, upon presentation and surrender of such Bonds as the same shall become due and payable. Payment of the interest on each Bond due prior to maturity or earlier redemption shall be by check mailed by the Registrar on each Interest Payment Date to the person whose name appears on the registration books of the Registrar as the registered owner thereof, at such registered owner's address as it appears on such registration books on the Record Date.

(c) Each Bond shall be executed by the manual or facsimile signatures of the Mayor and the Finance Director of the City and the original or a facsimile of the official seal of the City shall be impressed or printed thereon. In case any officer whose signature or facsimile signature shall appear on any Bond shall cease to be such officer before the delivery of such Bond, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if such person had remained in office until such delivery, and also any Bond may be signed by such persons as at the actual time of the execution of such Bond shall be the proper officers to sign such Bond although at the date of such Bond such persons may not have been such officers.

(d) The City shall provide the Registrar with a supply of bond certificates for issuance upon subsequent transfers. In the event that such supply of certificates shall be insufficient to meet the requirements of the Registrar for issuance of replacement bond certificates upon transfer, the City agrees to order printed an additional supply of bond certificates and to direct their execution by manual or facsimile signature of its then duly qualified and acting officers. In case any officer whose signature or facsimile thereof shall appear on any Bond shall cease to be such officer before the delivery of such Bond (including any bond certificates delivered to the Registrar for issuance upon transfer or partial redemption), such signature or such facsimile thereof shall nevertheless be valid and sufficient for all purposes the same as if such officer or officers had remained in office until the delivery of such Bond.

**Section 10. Book-Entry Bonds.** Each series of Bonds shall be issued initially as Book-Entry-Only Bonds using the services of The Depository Trust Company (the “**Depository**”) with one typewritten Bond per maturity being issued to the Depository. In such connection said officers are authorized to execute and deliver a letter of understanding and representation (the “**Representation Letter**”) in the form required by the Depository, for and on behalf of the City, which shall thereafter govern matters with respect to registration, transfer, payment and redemption of the Bonds.

Upon the issuance of the Bonds as Book-Entry-Only Bonds, the following provisions shall apply:

(a) The City and the Registrar shall have no responsibility or obligation to any broker-dealer, bank or other financial institution for which the Depository holds Bonds as securities depository (each, a “**Participant**”) or to any person who is an actual purchaser of a Bond from the Participant while the Bonds are in book-entry form (each, a “**Beneficial Owner**”) with respect to the following:

(i) the accuracy of the records of the Depository, any nominees of the Depository or any Participant with respect to any ownership interest in the Bonds;

(ii) the delivery to any Participant, any Beneficial Owner or any other person, other than the Depository, of any notice with respect to the Bonds, including any notice of redemption; or

(iii) the payment to any Participant, any Beneficial Owner or any other person, other than the Depository, of any amount with respect to the Bonds. The Registrar shall make payments with respect to the Bonds only to or upon the order of the Depository or its nominee, and all such payments shall be valid and effective fully to satisfy and discharge the obligations with respect to such Bonds to the extent of the sum or sums so paid. No person other than the Depository shall receive an authenticated Bond.

(b) Upon receipt by the Registrar of written notice from the Depository to the effect that the Depository is unable or unwilling to discharge its responsibilities, the Registrar shall issue, transfer and exchange Bonds requested by the Depository in appropriate amounts.

Whenever the Depository requests the City and Registrar to do so, the City and Registrar will cooperate with the Depository in taking appropriate action after reasonable notice (i) to arrange, with the prior written consent of the City, for a substitute depository willing and able upon reasonable and customary terms to maintain custody of the Bonds or (ii) to make available Bonds registered in whatever name or names the Beneficial Owners transferring or exchanging such Bonds shall designate.

(c) If the City determines that it is desirable that Bonds representing the Bonds be delivered to the Participants and/or Beneficial Owners of the Bonds and so notifies the City and Registrar in writing, the Registrar shall so notify the Depository, whereupon the Depository will notify the Participants of the availability through the Depository of Bonds representing the Bonds. In such event, the City and Registrar shall issue, transfer or exchange Bonds representing the Bonds as requested by the Depository in appropriate amounts and in authorized denominations.

(d) Notwithstanding any other provision of this Ordinance to the contrary, so long as any Bond is registered in the name of the Depository or any nominee thereof, all payments with respect to such Bond and all notices with respect to such Bond shall be made and given, respectively, to the Depository as provided in the Representation Letter.

(e) Registered ownership of the Bonds may be transferred on the books of registration maintained by the Registrar, and the Bonds may be delivered in physical form to the following:

(i) any successor securities depository or its nominee; and

(ii) any persons, upon (1) the resignation of the Depository from its functions as depository, or (2) termination of the use of the Depository pursuant to this Section.

(f) In the event of any partial redemption of a Bond unless and until such partially redeemed Bond has been replaced in accordance with the provisions of **Section 9(d)** of this Ordinance, the books and records of the Registrar shall govern and establish the principal amount of such Bond as is then Outstanding and all of the Bonds issued to the Depository or its nominee shall contain a legend to such effect.

If for any reason the Depository resigns and is not replaced, the City shall immediately provide a supply of printed bond certificates for issuance upon the transfers from the Depository and subsequent transfer or in the event of partial redemption. In the event that such supply of certificates shall be insufficient to meet the requirements of the Registrar for issuance of replacement Bonds upon transfer or partial redemption, the City agrees to order printed an additional supply of certificates and to direct their execution by manual or facsimile signature of its then duly qualified and acting Mayor and Finance Director.

**Section 11. Authentication of Bonds.** Only such Bonds as shall have endorsed thereon a certificate of authentication duly executed by the Registrar shall be entitled to any benefit or security under this Ordinance. No Bonds shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Registrar, and such certificate of the Registrar upon any Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Ordinance. The Registrar's certificate of authentication on any Bond shall be deemed to have been duly executed if signed by an authorized officer of the Registrar, but it shall not be

necessary that the same officer sign the certificate of authentication on all of the Bonds that may be issued hereunder at any one time.

**Section 12. Exchange of Bonds.** Bonds, upon surrender thereof at the principal office of the Registrar, together with an assignment duly executed by the bondholder or its attorney or legal representative in such form as shall be satisfactory to the Registrar, may, at the option of the registered Owner thereof, be exchanged for an equal aggregate principal amount of Bonds of the same Series and maturity, of any denomination or denominations authorized by this Ordinance and bearing interest at the same rate, and in substantially the same form as the Bonds surrendered for exchange. The City shall make provision for the exchange of the Bonds at the principal office of the Registrar.

**Section 13. Negotiability, Registration and Transfer of Bonds.** The Registrar shall keep books for the registration and registration of transfer of Bonds as provided in this Ordinance. The transfer of any Bond may be registered only upon the books kept for the registration and registration of transfer of Bonds upon surrender thereof to the Registrar, together with an assignment duly executed by the registered Owner or his attorney or legal representative in such form as shall be satisfactory to the Registrar. Upon any such registration of transfer the City shall execute and the Registrar shall authenticate and deliver in exchange for such Bond a new Bond or Bonds, registered in the name of the transferee, of any denomination or denominations authorized by this Ordinance in an aggregate principal amount equal to the principal amount of such Bond surrendered or exchanged, of the same series and maturity and bearing interest at the same rate.

In all cases in which Bonds shall be exchanged or the transfer of Bonds shall be registered hereunder, the City shall execute and the Registrar shall authenticate and deliver at the earliest practicable time Bonds in accordance with the provisions of this Ordinance. All Bonds surrendered in any such exchange or registration of transfer shall forthwith be canceled by the Registrar. Neither the City nor the Registrar shall make a charge for the first such exchange or registration of transfer of any Bond for each holder. The City or the Registrar, or both, may make a charge for shipping, printing and out-of-pocket costs for every subsequent exchange or registration of transfer of any Bond sufficient to reimburse it or them for any and all costs required to be paid with respect to such exchange or registration of transfer. Neither the City nor the Registrar shall be required to make any such exchange or registration of transfer of Bonds during the period between the relevant Record Date and the Interest Payment Date or, in the case of any proposed redemption of Bonds, after notice of the redemption of such Bonds or any portion thereof shall have been given pursuant to **Section 21** of this Ordinance.

**Section 14. Ownership of Bonds.** As to any Bond, the person in whose name the same shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal of and interest on such Bond and the interest on any such Bond shall be made only to or upon the order of the registered Owner thereof or his legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond, including the interest thereon, to the extent of the sum or sums so paid.

**Section 15. Disposition and Destruction of Bonds.** All Bonds surrendered to the Registrar for payment shall be canceled upon such payment by the Registrar and, upon written request of the Finance Director, shall be destroyed.

**Section 16. CUSIP Identification Numbers.** At the sole option of the Finance Director, CUSIP identification numbers may be printed on the Bonds, but no such number shall be deemed to be a part of any Bond or a part of the contract evidenced thereby, and no liability shall attach to the City or any officer or agent thereof (including without limitation the Registrar) because of or on account of said CUSIP identification numbers or any use made thereof.



**Section 17. Redemption of Bonds.** At the option of the City, the Bonds of any series issued under the provisions of this Ordinance may be made subject to redemption, both in whole and in part and at such times and redemption prices, as may be determined by the Finance Director in accordance with the provisions of **Section 6** hereof; provided, however, that Term Bonds shall be made subject to redemption to the extent of any sinking fund requirement therefor in each year in which there is a sinking fund requirement in respect of such Term Bonds.

**Section 18. Redemption at the Direction of the City.** In the case of any redemption of any Bonds at the direction of the City, the Finance Director will select the series, maturities and principal amounts thereof to be redeemed and the Finance Director shall give written notice to the Registrar specifying the redemption date and the maturities and principal amounts of such series to be redeemed, and directing the Registrar to give notice of redemption to the owners of Bonds selected for redemption. The City shall give such notice at least 15 business days (or such shorter period as may be agreed to by the Registrar) before the last day on which the Registrar may give notice of redemption to the owners of the Bonds of such series.

**Section 19. Redemption Otherwise than at the City's Direction.** Whenever the Registrar is required or authorized to redeem Bonds otherwise than at the direction of the City, the Registrar shall, subject to receipt of any notice from the City pursuant to **Section 17**, select the Bonds to be redeemed and shall give the notice of redemption.

**Section 20. Selection of Bonds to be Redeemed.** If less than all Bonds of a series are to be redeemed, the principal amount and the maturity or maturities of Bonds to be redeemed may be selected by the City in its sole and absolute discretion. The City shall give written notice of its selection not later than 15 business days (or such shorter period as may be agreed to by the Registrar) before the last day on which the Registrar may give notice of redemption to the owners of the Bonds of such series. If the City does not give notice of its selection, the Registrar shall select the Bonds to be redeemed in inverse order of maturity. If less than all of the Bonds of like maturity of a series are to be redeemed, the particular Bonds or portions of Bonds to be redeemed shall be selected at random by the Registrar in such manner as the Registrar in its discretion may deem fair and appropriate.

**Section 21. Notice of Redemption.** Each notice of redemption of Bonds of any series shall be mailed by first class mail by the Registrar, not less than thirty (30) days prior to the redemption date, to each owner whose Bonds are called for redemption. Each notice of redemption shall state the distinguishing designation of the series of Bonds to which such notice relates, the date of issue of such series of Bonds, the redemption date, the redemption price, the place or places of redemption (including the name and appropriate address or addresses of the Registrar), the CUSIP number (if any) of the maturity or maturities, and, if less than all of any such maturity, the distinctive certificate numbers of the Bonds of such maturity to be redeemed and, in the case of Bonds to be redeemed in part only, the respective portions of the principal amount thereof to be redeemed. Each such notice shall also state that on said date there will become due and payable on each of said Bonds the redemption price thereof or of said specified portion of the principal amount thereof in the case of a Bond to be redeemed in part only, together with interest accrued thereon to the date fixed for redemption, and that from and after such redemption date, interest thereon shall cease to accrue, and shall require that such Bonds be then surrendered at the address or addresses of the Registrar specified in the redemption notice. Neither the City nor the Registrar shall have any responsibility for any defect in the CUSIP number that appears on any Bond or in any redemption notice with respect thereto, and any such redemption notice may contain a statement to the effect that CUSIP numbers have been assigned by an independent service agency for convenience of reference and that neither the City nor the Registrar shall be liable for any inaccuracy in such numbers.

Failure of any owner to receive notice or any defect in any such notice shall not affect the sufficiency of the proceedings for redemption.

**Section 22. Payment of Redeemed Bonds.** Notice having been given in the manner provided in **Section 21**, the Bonds, or portions thereof so called for redemption, shall become due and payable on the redemption date so designated at the redemption price thereof, plus interest accrued and unpaid to the redemption date, and, upon presentation and surrender thereof at the office specified in such notice, such Bonds, or portions thereof, shall be paid at the redemption price thereof, plus interest accrued and unpaid to the redemption date. If there shall be drawn for redemption a portion of a Bond, the City shall execute, and the Registrar shall authenticate and deliver, upon the surrender of such Bond, without charge to the owner thereof, for the unredeemed balance of the principal amount of the Bond so surrendered, a Bond of like series and maturity in any authorized denomination. If, on the redemption date, money for the redemption of all the Bonds or portions thereof of any like series and maturity to be redeemed, together with interest to the redemption date, shall be available therefor on said date and if notice of redemption shall have been given as aforesaid, then, from and after the redemption date interest on the Bonds or portion thereof of such series and maturity so called for redemption shall cease to accrue and become payable. If said money shall not be so available on the redemption date, such Bonds or portions thereof shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption.

**Section 23. Cancellation of Redeemed Bonds.** All Bonds surrendered or redeemed pursuant to the provisions of this Ordinance shall be canceled.

**Section 24. The Registrar.** The Registrar shall keep and maintain for the City books for the registration and transfer of the Bonds at its office. The name(s), registered address(es) and tax identification number(s) of the registered owner or owners of each series of Bonds shall at all times be recorded in such books. Any Bond may be transferred pursuant to its provisions at the office of the Registrar by surrender of such Bond for cancellation, accompanied by a written instrument of transfer, in form satisfactory to the Registrar, duly executed by the registered owner in person or by such owner's duly authorized agent, and thereupon the Registrar, on behalf of the City, will deliver at its office (or send by registered mail to the transferee owner or owners thereof at such transferee owner's or owners' risk and expense), registered in the name of the transferee owner or owners, a new Bond or Bonds of the same series, interest rate, aggregate principal amount and maturity. One Bond may be transferred for several such Bonds of the same series, interest rate and maturity, and for a like aggregate principal amount, and several such Bonds may be transferred for one or several such Bonds, respectively, of the same series, interest rate and maturity and for a like aggregate principal amount. In every case of transfer of a Bond, the surrendered Bond shall be canceled and destroyed. All Bonds issued upon transfer of the Bonds so surrendered shall be valid obligations of the City evidencing the same obligation as the Bonds surrendered and shall be entitled to all the benefits and protection of this Ordinance to the same extent as the Bonds upon transfer of which they were delivered. The City and the Registrar shall not be required to transfer any Bond during any period from any Record Date until the immediately following Interest Payment Date or to transfer any Bond called for redemption for a period of 30 days next preceding the date fixed for redemption.

**Section 25. Highway Allocation Construction Fund; Highway Allocation Debt Service Fund; Highway Allocation Debt Service Reserve Fund.**

(a) Highway Allocation Construction Fund. The net proceeds of each series Bonds remaining after the deposit required by **Subsection 4(b)(i)** has been made shall be deposited by the Finance Director or the City Controller in a special capital projects fund, which is hereby created and established, which shall be appropriately designated by the Finance Director as the \_\_\_\_\_ Highway Allocation Construction Fund, and shall be disbursed according to such procedures as shall be

established by the Finance Director or the City Controller (1) to pay the costs of constructing the Project, and (2) to pay the costs of issuance of the Bonds.

(b) Highway Allocation Debt Service Fund. There is hereby created and established with the City the Highway Allocation Debt Service Fund (the “**Debt Service Fund**”) for the purposes of paying the principal of, premium, if any, and interest on each series of Bonds issued by the City. There shall be deposited into the Debt Service Fund as and when received, (1) any accrued interest received upon the issuance, sale and delivery of the Bonds, (2) each month, from balances in the Street Construction Fund of the City constituting money received from the Highway Allocation Fund of the State, an amount such that if the same amount is deposited each month into the Highway Allocation Debt Service Fund, there shall be on deposit therein balances sufficient to pay the principal of and interest on each series of Bonds when and as the same shall become due, (3) such other legally available funds of the City as shall be determined by the Finance Director which is required or which is accompanied by directions that such money is to be paid into the Debt Service Fund, (4) all ad valorem taxes levied and collected by the City under this Ordinance. Money in the Debt Service Fund shall be used solely for the (i) payment of the principal of, premium, if any, and interest on the Bonds and other general obligation indebtedness of the City and (ii) for the redemption of Bonds of any series or other highway fund allocation indebtedness of the City prior to maturity.

(c) Highway Allocation Debt Service Reserve Fund. The City, upon determination by the Finance Director that such action is necessary, desirable, advisable and in the best interest of the City, may establish a debt service reserve fund or account (each a “**Reserve Fund**”) for any series of Bonds issued pursuant to this Ordinance which shall be for the benefit and security of such series of Bonds. In connection with the establishment of any Reserve Fund, the following provisions shall apply:

(i) Each Reserve Fund shall be held by the City and shall be administered in accordance with the provisions hereof.

(ii) If any withdrawal from any Reserve Fund is made for the purpose of subsection (iii)(A) below, the amount of such withdrawal shall be restored by the City in no more than 12 substantially equal, consecutive, monthly installments, each payable on the last business day of the month, commencing with the month in which the withdrawal is made; provided that, if any withdrawal is made and if, prior to the restoration of the amount withdrawn, an additional withdrawal is made, such additional withdrawal shall be restored in equal monthly installments over the remainder of the restoration period for the initial withdrawal.

(iii) Any money on deposit in any Reserve Fund shall be applied as follows:

(A) On the date of each required payment from the Highway Allocation Debt Service Fund, money in any Reserve Fund shall be applied to cure any deficiency in the Highway Allocation Debt Service Fund with respect to the series of Bonds for which such Reserve Fund was established;

(B) Any amount in any Reserve Fund in excess of the balance required to be maintained therein shall be transferred to the Highway Allocation Debt Service Fund and credited against the payments of the principal and interest next becoming due on the series of Bonds for which such Reserve Fund was established.

(C) On the interest payment date immediately preceding the final maturity date of any series of Bonds, money held in the Reserve Fund established for such series of Bonds shall be deposited into the Highway Allocation Debt Service Fund and credited against the deposits required to be made into the Highway Allocation Debt Service Fund

with respect to such series of Bonds but only to the extent that, immediately following such crediting and transfer, the amount on deposit in such Reserve Fund is equal to the lesser of (1) the balance required to be maintained therein with respect to such series of Bonds and (2) the amount of principal and interest due in respect of such series of Bonds on such final maturity date.

(iv) The City shall be permitted to substitute a letter of credit, surety bond or other credit enhancement (each, a “**credit facility**”) for funds on deposit in any Reserve Fund, provided that:

(A) the credit facility (including any replacement credit facility) is issued by a bank, trust company, national banking association or insurance company whose unsecured long term debt obligations (in the case of a bank, trust company or national banking association) or whose claims paying abilities (in the case of an insurance company) are rated not lower than the “AAA” rating category by a rating agency at the time the credit facility is issued and at the time of each extension or renewal thereof;

(B) the issuer of the credit facility receives as security for any reimbursement obligation in respect of the credit facility a lien solely on amounts in the Street Construction Fund on a parity with any Bonds then outstanding; and

(C) the credit facility (including any replacement credit facility, if provided by a different issuer) has an initial term of not less than one year and any extension, renewal or replacement (if provided by the same issuer) thereof has a term of not less than one year.

Upon such substitution, funds on deposit in any Reserve Fund which, when added to the face amount of the credit facility, exceed the balance required to be maintained therein with respect to the series of Bonds for which such Reserve Fund was established, shall be applied as provided in subsection (iii)(B) above (subject to yield restriction, if any, as determined by bond counsel). Thereafter, the credit facility shall be considered a part of such Reserve Fund and the amount available thereunder shall be included in any calculations of the amount required to be retained in such Reserve Fund; provided that, (I) if the sum of the amount available under the credit facility and the amount of moneys on deposit in the related Reserve Fund exceed the amount required to be on deposit therein, the City shall be permitted (a) to cause the amount available under the credit facility to be reduced by an amount equal to such excess, or (b) to direct that the excess money be applied as permitted under subsection (iii)(B) above, and (II) if the credit facility is not extended, renewed or replaced at least six months prior to its scheduled expiration or termination date, the City shall be obligated to restore the difference between the amount required to be maintained therein and the value of such Reserve Fund computed without regard to the credit facility prior to the expiration or termination date of such credit facility.

**Section 26. Transfer of Funds to Registrar.** The Finance Director is hereby authorized and directed to withdraw from the Debt Service Fund sums sufficient to fully pay both principal and interest on the Bonds as and when the same become due and to pay the charges for services rendered by the Registrar, and to forward such sums to the Registrar in immediately available funds no less than five (5) business days before the date when such principal, interest and fees mature or become due.

**Section 27. Highway Allocation Fund Rebate Account.** To ensure proper compliance with the tax covenants contained in **Section 29** hereof, the City shall establish and the City Treasurer shall maintain for each series of Bonds an account in the City’s Arbitrage Rebate Fund, separate from any other fund or account established and maintained hereunder, which account shall be designated by the

Finance Director as the \_\_\_\_\_ Highway Allocation Fund Rebate Account (the “**Rebate Account**”). All money at any time deposited in the Rebate Account in accordance with the provisions of the Tax Certificate delivered by the City in connection with a series of Bonds, as from time to time amended or supplemented, shall be held by the City Treasurer for the account of the City in trust for payment to the federal government of the United States of America, and neither the City nor the owner of any Bond shall have any rights in or claim to such money. All amounts deposited into or on deposit in any Rebate Account shall be governed hereby and by the Tax Certificate executed and delivered by the City in connection with the series of Bonds for which such Rebate Account was established. The City Treasurer shall invest all amounts held in any Rebate Account in accordance with the related Certificate. Money shall not be transferred from any Rebate Account except in accordance with the related Tax Certificate.

**Section 28. Discharge of Liens and Obligations.** The City’s obligations under this Ordinance and the liens, pledges, dedications, covenants and agreements of the City herein made or provided for shall be fully discharged and satisfied as to any of the Bonds issued hereunder, and said Bonds shall no longer be deemed Outstanding hereunder if such Bonds shall have been purchased and canceled by the City or, as to any of said Bonds not theretofore purchased and canceled by the City, when payment of the principal of and any applicable redemption premium, if any, on such Bonds plus interest thereon to the respective dates of maturity or redemption (a) shall have been made or caused to be made in accordance with the terms thereof; or (b) shall have been provided for by depositing with a state or national bank having trust powers or trust company in trust solely for such payment (i) sufficient moneys to make such payment and/or (ii) Escrow Obligations in such amount and bearing interest payable and maturing or redeemable at stated fixed prices at the option of the holder as to principal at such times as will ensure the availability of sufficient moneys to make such payment and such Bonds shall cease to draw interest from the date fixed for their redemption or maturity and, except for the purposes of such payment, shall no longer be entitled to the benefits of this Ordinance; provided that, with respect to any such Bonds called or to be called for redemption, the City shall have duly given notice of redemption or made irrevocable provision for such notice. Any such moneys so deposited with the aforesaid state or national bank or trust company as provided in this section may be invested and reinvested in Deposit Securities at the direction of the City and all interest and income from all such Deposit Securities in the hands of the aforesaid trustee bank or trust company which are not required to pay principal and interest on the Bonds for which such deposit has been made shall be paid to the City as and when realized and collected.

#### **Section 29. Tax Covenants.**

(a) The City covenants and agrees that (1) it will comply with all applicable provisions of the Code, including Sections 103 and 141 through 150, necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Bonds and (2) it will not use or permit the use of any proceeds of Bonds or any other funds of the City nor take or permit any other action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on the Bonds. The City will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the interest on the Bonds will remain excluded from federal gross income, to the extent any such actions can be taken by the City.

(b) The City covenants and agrees that (1) it will comply with all requirements of Section 148 of the Code to the extent applicable to the Bonds, (2) it will use the proceeds of the Bonds as soon as practicable and with all reasonable dispatch for the purposes for which the Bonds are issued, and (3) it will not invest or directly or indirectly use or permit the use of any proceeds of the Bonds or any other funds of the City in any manner, or take or omit to take any action, that would cause the Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Code.

(c) The City covenants and agrees that it will pay or provide for the payment from time to time of all amounts required to be rebated to the United States pursuant to Section 148(f) of the Code and any Treasury Regulations applicable to the Bonds from time to time. This covenant shall survive payment in full or defeasance of the Bonds. The City specifically covenants to pay or cause to be paid to the United States, the required amounts of rebatable arbitrage at the times and in the amounts as determined by the Tax Certificate. Notwithstanding anything to the contrary contained herein, the Tax Certificate may be amended or replaced if, in the opinion of counsel nationally recognized on the subject of municipal bonds, such amendment or replacement will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds.

(d) The City covenants and agrees that it will not use any portion of the proceeds of the Bonds, including any investment income earned on such proceeds, directly or indirectly, in a manner that would cause any Bond to be a "private activity bond."

The foregoing covenants shall remain in full force and effect notwithstanding the defeasance of the Bonds pursuant to the provisions of this Ordinance until the final maturity date of all Bonds outstanding.

**Section 30. Continuing Disclosure.** The City hereby covenants and agrees that it will comply with and carry out all of the provisions of each Continuing Disclosure Certificate. Notwithstanding any other provision of this Ordinance, failure of the City to comply with any Continuing Disclosure Certificate shall not be considered an event of default hereunder; however, any Participating Underwriter or any Beneficial Owner or any other owner of a Bond may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the City to comply with its obligations under this Section. For purposes of this Section, "**Beneficial Owner**" means any person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

**Section 31. General and Specific Authorizations; Ratification of Prior Actions.** Without in any way limiting the power, authority or discretion elsewhere herein granted or delegated, the City Council hereby (a) authorizes and directs the Mayor, the Finance Director, the City Treasurer, the City Clerk, the City Attorney, the City Controller, any individual authorized to act on their behalf, and all other officers, officials, employees and agents of the City to carry out or cause to be carried out, and to perform such obligations of the City and such other actions as they, or any of them, in consultation with bond counsel, the purchaser or purchasers of any series of Bonds and its or their counsel, shall consider necessary, advisable, desirable or appropriate in connection with this Ordinance, including without limitation the execution and delivery of all related documents, instruments, certifications and opinions, and (b) delegates, authorizes and directs the Finance Director or the City Controller the right, power and authority to exercise his or her own independent judgment and absolute discretion in (i) determining and finalizing all terms and provisions to be carried by each series of Bonds not specifically set forth in this Ordinance and (ii) the taking of all actions and the making of all arrangements necessary, proper, appropriate, advisable or desirable in order to effectuate issuance, sale and delivery of each series of Bonds. The execution and delivery by the Finance Director or the City Controller or by any such other officers, officials, employees or agents of the City of any such documents, instruments, certifications and opinions, or the doing by them of any act in connection with any of the matters which are the subject of this Ordinance, shall constitute conclusive evidence of both the City's and their approval of the terms, provisions and contents thereof and of all changes, modifications, amendments, revisions and alterations made therein and shall conclusively establish their absolute, unconditional and irrevocable authority with respect thereto from the City and the authorization, approval and ratification by the City of the documents, instruments, certifications and opinions so executed and the actions so taken.

All actions heretofore taken by the Finance Director and all other officers, officials, employees and agents of the City, including without limitation the expenditure of funds and the selection, appointment and employment of bond counsel and financial advisors and agents, in connection with issuance and sale of any Bonds, together with all other actions taken in connection with any of the matters which are the subject hereof, be and the same is hereby in all respects authorized, adopted, specified, accepted, ratified, approved and confirmed.

**Section 32. Proceedings Constitute Contract; Enforcement Thereof.** The provisions of this Ordinance, of any supplemental ordinance, and of any resolutions or other proceedings providing for the sale of the Bonds and the terms and provisions thereof shall constitute a contract between the City and the bondholders and the provisions thereof shall be enforceable by any owner of any Bond for the equal benefit and protection of all such bondholders similarly situated, by mandamus, accounting, mandatory injunction or any other suit, action or proceeding at law or in equity that is presently or may hereafter be authorized under the laws of the State of Nebraska in any court of competent jurisdiction. Said contract is made under and is to be construed in accordance with the laws of Nebraska.

After the issuance and delivery of any series of Bonds, this Ordinance and any supplemental ordinance shall not be repealable, but shall be subject to modification or amendment to the extent and in the manner provided in this Ordinance, but to no greater extent and in no other manner.

**Section 33. Benefits of Ordinance Limited to the City and Owners of the Bonds.** With the exception of rights or benefits herein expressly conferred, nothing expressed or mentioned in or to be implied from this Ordinance or any Bond is intended or should be construed to confer upon or give to any person other than the City and the owners of any Bonds, any legal or equitable right, remedy or claim under or by reason of or in respect to this Ordinance or any covenant, condition, stipulation, promise, agreement or provision herein contained. The Ordinance and all of the covenants, conditions, stipulations, promises, agreements and provisions hereof are intended to be and shall be for and inure to the sole and exclusive benefit of the City and the owners from time to time of any Bond as herein and therein provided.

**Section 34. No Personal Liability.** No officer or employee of the City shall be individually or personally liable for the payment of the principal of or interest on any Bond. Nothing herein contained shall, however, relieve any such officer or employee from the performance of any duty provided or required by law.

**Section 35. Effect of Saturdays, Sundays and Legal Holidays.** Whenever this Ordinance requires any action to be taken on a Saturday, Sunday or legal holiday, such action shall be taken on the first business day occurring thereafter. Whenever in this Ordinance the time within which any action is required to be taken or within which any right will lapse or expire shall terminate on a Saturday, Sunday or legal holiday, such time shall continue to run until midnight on the next succeeding business day.

**Section 36. Partial Invalidity.** If any one or more of the covenants or agreements or portions thereof provided in this Ordinance on the part of the City or the Registrar to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant or covenants, or such agreement or agreements, or such portions thereof, shall be deemed severable from the remaining covenants and agreements or portions thereof provided in this Ordinance and the invalidity thereof shall in no way affect the validity of the other provisions of this Ordinance or of any of the Bonds, but the owner of any Bond shall retain all the rights and benefits accorded to them hereunder and under any applicable provisions of law.

If any provisions of this Ordinance shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any constitution or statute or rule of public policy,

or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable or invalid in any other case or circumstance, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatever.

**Section 37. Applicable Law and Place of Enforcement of this Ordinance.** The Ordinance shall be construed and interpreted in accordance with the laws of the State of Nebraska. All suits and actions arising out of this Ordinance shall be instituted in a court of competent jurisdiction in Lincoln, Nebraska except to the extent necessary for enforcement, by any trustee or receiver appointed by or pursuant to the provisions of this Ordinance, or remedies under this Ordinance.

**Section 38. Effect of Article and Section Headings and Table of Contents.** The headings or titles of the several Articles and Sections hereof, and any table of contents appended hereto or to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of this Ordinance.

**Section 39. Repeal of Inconsistent Ordinance.** Any ordinance of the City, and any part of any ordinance or resolution, inconsistent with this Ordinance is hereby repealed to the extent of such inconsistency.

**Section 40. Publication and Effectiveness of This Ordinance.** Pursuant to Article VII, Section 7, of the City Charter, this Ordinance shall be posted on the official bulletin board of the City in lieu of and in place of newspaper publication with notice of passage and such posting to be given by publication one time in the official newspaper by the City Clerk.



**INTRODUCED BY:**

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**PASSED** \_\_\_\_\_, 2004.

**AYES:** \_\_\_\_\_

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**NAYS:** \_\_\_\_\_

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**ABSENT OR NOT VOTING:**

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**Approved as to Form:**

\_\_\_\_\_  
**City Attorney**

\_\_\_\_\_  
**Bond Counsel**

**CONFLICT OF INTEREST:**

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**APPROVED:** \_\_\_\_\_, 2004.

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**Mayor**

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